

Congress of the United States
Washington, DC 20510

December 5, 2007

Mr. Gregory H. Friedman
Inspector General
U.S. Department of Energy
1000 Independence Ave, SW
Washington, DC 20585

Dear Mr. Friedman:

We write today to request that you review possible conflicts of interest related to the law firm Morgan, Lewis, and Bockius's (Morgan) contract with the Department of Energy to perform legal services related to licensing Yucca Mountain as a nuclear waste repository. The Department awarded the contract to Morgan on or around September 26, 2007.

While DOE has not made this contract public, available public records show that Morgan may have conflicts of interest based on the firm's legal representation of commercial utilities against the Department, as well as lobbying activities on behalf of the nuclear industry's trade association, the Nuclear Energy Institute (NEI).

In November 2001, your office concluded a review of alleged conflicts of interest involving a legal services contract for work on Yucca Mountain that the Department awarded to Winston and Strawn (Winston). Some of the conflicts identified in your 2001 report could also be present in the Morgan contract for legal services. In addition, Morgan's possible conflicts are very similar to those identified in 1999 by the Head of Contracting Activity in the Office of Headquarters Procurement Services (HCA), which led to the HCA's denial of a bid from another law firm. We have enclosed a more detailed analysis of these possible conflicts.

In our view, these conflicts could independently warrant the recusal of Morgan from the September contract. The HCA's 1999 decision stated that although the "utilities and [the Department] both have an interest in having the license issued quickly," the Department is required by statute – the Nuclear Waste Policy Act – to serve "a broader interest of protecting the environment and public health." 42 U.S.C. §10131(a)(4)(5). Given the fact that Morgan has a duty to be loyal to two sets of clients, DOE and the utilities Morgan represents in lawsuits against DOE regarding the government's acceptance of the utilities' nuclear waste, the possible conflicts of interests could be damaging to the broader public interest.

Another possible conflict that could undermine Morgan's ability to impartially represent the Department is the firm's 2001-2002 investigation of the Yucca Mountain quality assurance (QA) program. It is apparent that Morgan's investigation looked past critical flaws in the Department's QA program, targeting the QA project director who was then dismissed, followed by a decision by the Department of Labor that the director's dismissal was unjust. The subsequent series of Government Accountability Office (GAO) reports and congressional

hearings demonstrated that the Yucca Mountain QA program faced serious problems, including poor management, ineffective performance indicators, falsified technical data, and a lack of or ineffective procedures to ensure confidence in scientific work. Given the troubled history involving Yucca Mountain's QA program, to which Morgan is inextricably linked, Morgan could now be in a position of choosing between protecting itself, and ensuring that the Department's QA deficiencies have been adequately addressed.

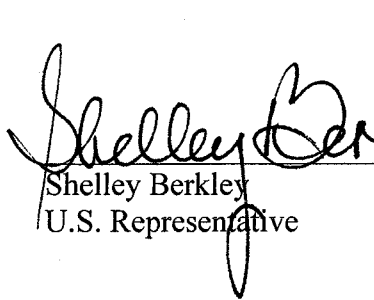
Again, we urge you to review these matters, and determine whether any conflicts exist between Morgan's contract with the Department for legal work on Yucca Mountain, and Morgan's work on behalf of nuclear utilities and the Nuclear Energy Institute, as well as the firm's involvement in the Yucca Mountain QA investigation.

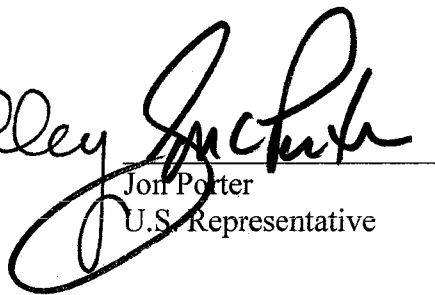
Should you have any questions about our request, please contact Dayle Cristinzio (Senator Reid, 202-224-6586), Pam Thiessen (Senator Ensign, 202-224-6244), David Cherry (Congresswoman Berkley, 202-225-5965), Shannon Meade (Congressman Porter, 202-225-3252), or Greg Facchiano (Congressman Heller, 202-225-6155). We appreciate your close attention to this matter and look forward to a timely response to our request.

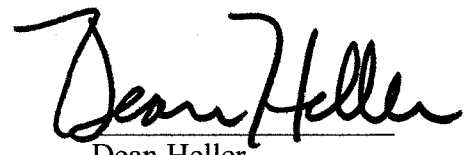
Sincerely,


Harry Reid
U.S. Senator


John Ensign
U.S. Senator


Shelley Berkley
U.S. Representative


Jon Porter
U.S. Representative


Dean Heller
U.S. Representative

REPRESENTING CLIENTS AGAINST THE DEPARTMENT OF ENERGY

In its previous Yucca legal contracts, the Department has included a provision that deems a firm to have a conflict of interest if the firm has represented in the last five years a party against the government involving the agency's Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste. Nuclear utilities have entered into the Standard Contract with DOE to obligate the federal government to take nuclear waste once a repository is open.

Despite this provision, DOE has hired the law firm Morgan, Lewis and Bockius (Morgan) to work on the Yucca license application, although the firm has represented several utilities in lawsuits involving the Standard Contract against the DOE within the past five years.

In 1999, during a solicitation on the initial contract for legal work on licensing Yucca, the DOE's Head of Contracting Activity rejected bids from two law firms because they represented utilities in Standard Contract cases against the DOE in federal court. While a private party could waive such a conflict of interest, under the Nuclear Waste Policy Act, the DOE "serves a broader interest of protecting the environment and public health" than does a private party. Thus, while DOE's policy of rushing the license application for Yucca is shared by the nuclear utilities that Morgan represents, the DOE has a statutory responsibility to look at the public interest beyond completing the project.

Any law firm representing DOE has professional ethical responsibilities, including a duty to not intentionally prejudice or damage the client. Morgan cannot guarantee that it will uphold its ethical responsibilities if it has a duty to serve two different interests, that of DOE's and the utilities' the firm represents, which are adversaries in lawsuits regarding the government's acceptance of the utilities' nuclear waste.

LOBBYING ACTIVITIES FOR THE NUCLEAR INDUSTRY

Morgan was a registered lobbyist for the Nuclear Energy Institute (NEI) from 2001 to 2002, and is currently a member of NEI. Specifically in its registration forms filed with Congress, Morgan stated that it was lobbying on the "Nuclear Waste Policy Act," and the firm contacted members of the House and Senate, as well as the Department of Energy. It is safe to assume that they were advocating a position that paralleled the Administration's position on Yucca. However, the fact that DOE and NEI shared a similar policy interest while Morgan worked for NEI does not necessarily mean that there is no conflict.

In 2001, the DOE Inspector General found that Winston & Strawn (Winston), who won a 1999 contract to perform Yucca legal services, violated the contract's conflict of interest provision by failing to disclose lobbying activities for NEI. While it is unlikely that Morgan would make this same mistake, the nature of their relationship with NEI could still create a conflict of interest for several reasons.

First, similar to the ethical conflict of representing a utility against DOE in a Yucca-related lawsuit, by lobbying for NEI on the Nuclear Waste Policy Act, Morgan may have placed the utilities' interests on this issue above the broader public interest. While lobbyists do not have the

same professional ethical responsibilities as lawyers, and Morgan has vowed publicly to create a "firewall" between its work for utilities and DOE, the relationship should still be investigated to ensure that conflicts have been avoided.